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IN THE

Supreme Court of the United States

OCTOBER TERM, 1932.

No. [redacted] 11

CENTRAL KENTUCKY NATURAL GAS COMPANY, *Appellant*,

vs.

RAILROAD COMMISSION OF KENTUCKY ET AL., *Appellees*.

Appeal from the District Court of the United States for the Eastern District of Kentucky.

MOTION, WITH BRIEF, OF MRS. GEORGE HIGNIGHT ET AL., MOVENTS, APPEARING SPECIALLY FOR THE PURPOSE, TO DISMISS THE APPEAL.

MAURICE H. THATCHER,
JOSEPH A. EDGE,
JOHN H. CONNAUGHTON,
RAYMOND M. HUDSON,
Counsel for Movents.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1932.

No. 779.

CENTRAL KENTUCKY NATURAL GAS COMPANY, *Appellant*,

vs.

RAILROAD COMMISSION OF KENTUCKY, MOSES R. GLENN, OSCAR VEST, AND JAMES HATCHER, MEMBERS CONSTITUTING SAID RAILROAD COMMISSION, ET AL.

Appeal from the District Court of the United States for the Eastern District of Kentucky.

MOTION ON SPECIAL APPEARANCE TO DISMISS THE APPEAL, WITH BRIEF.

Now comes Mrs. George Hignight, Mrs. Wellington Payne, Mrs. Anna Mae Hollinger, Mrs. Gladys Berkley, J. W. Kelph, Stanley Dearborn, William Dearborn, P. P. O'Neill, Mrs. Margaret Taylor, R. T. Childers, Nancy Bell Henderson and H. E. Stevens, who were parties of record

in the Court below individually and as members of and representatives of the Gas Consumers League of Lexington, Kentucky, a group composed of about 6200 gas consumers, citizens and taxpayers of the City of Lexington, and other groups of gas consumers, appearing specially for this purpose, and no other, move the Court to dismiss the above entitled appeal for the reasons herein set forth.

1. These movents file herewith a certificate, being a certified copy of the petition of these movents filed as intervenors in this cause in the lower Court, being the District Court of the United States of the Eastern District of Kentucky and sixty-nine additional pages of proceedings in the lower Court—which petition and proceedings are omitted from the transcript of the appeal as printed in this Court and which omitted record is necessary for proper determination of the issues involved in this appeal.

Further omitted records are now tendered, for the consideration of the Court, marked volume 1 and volume 2, being certified copies of proceedings before the Kentucky Railroad Commission in this case which are omitted from the printed transcript in this Court on this appeal, the decrees of the Court below made the entire Railroad Commission record a part of the record of the Court below; it appears from these certificates that the movents were made parties to and took an active part in all the proceedings in the lower Court, as well as before the Kentucky Railroad Commission, in dealing with the question of rates involved in this proceeding; and further that by reason of the fact that they and those for whom they have spoken in the Court below and before the State Railroad Commission were then and are now consumers of gas of the appellant company in the City of Lexington, their interests in all these proceedings are of the most vital character.

2. The Kentucky Railroad Commission refused to take jurisdiction of and try this rate proceeding that is sought to be enjoined in this suit until it was required to do so by a Writ of Mandamus sued out by these movents and those

they represent in a suit in the name of Mrs. George Highnight and other movents in the State Courts of Kentucky, wherein present Counsel for appellants appeared as Counsel for and represented the Commission; the City Attorney of Lexington, Kentucky, at the time of the mandamus suit was General Counsel for one of appellants local affiliates or subsidiaries.

3. The movents further respectfully represent that some $900,000.00 has been impounded under the orders of said Railroad Commission and said lower Court to the end that refunds may under certain conditions be made to all the consumers of gas in Lexington; and these movents and the ones they represent constitute all of such gas consumers and potential beneficiaries of said impounded funds, except Featherstone; the refund that Featherstone is entitled to will amount to about $300.00, but he never applied for or sought such refund; that movents and some 4200 consumers in the groups represented by movents have filed written petitions for their refunds, and the others have applied through movents; said impoundings and related proceedings were all made upon the application of these Movents.

4. At page 38 of the printed record appears section 37 of the franchise in controversy in this litigation which is as follows:

> "Sec. 37. In any proceeding in the Railroad Commission, Court, or other tribunal or before the City Commissioners under section 7 of this Ordinance, where the rates or regulations as provided for under the provisions hereof are being assailed or sought to be regulated by agreement under said Section 7 by the Company or the City, *any customer,* or *group of customers,* of the Company may appear and become a party thereto, and before any hearing shall be instituted for a fixation of rates before the City Commissioners as provided in Section 7, notice of any proposal to change the rates and of any hearing thereof shall be first published for a period of not less than five days in the official newspaper of the City of Lexington."

By virtue of said franchise provision the movents were authorized as a matter of right, and permitted for themselves and for those they represent to intervene and take part in all proceedings before the Kentucky State Railroad Commission and the lower Court in the hearing and determination of the issues involved in these proceedings; and in all such proceedings before said Commission and the lower Court they were represented by duly selected counsel, being J. A. Edge, Esq., of Lexington, Kentucky, for themselves and for those they represent, the thousands of gas consumers, members of the Gas Consumers League of Lexington, Kentucky, and the said J. A. Edge did in all such proceedings appear as counsel and participated in all such proceedings and was so recognized by the Court below and by the said Railroad Commission as the aforesaid omitted records affirmatively show.

5. The movents further respectfully represent that in the appeal, S. B. Featherstone is indicated in appellants' Bill as one who represented himself and all others similarly situated, but does not allege or contend he represents any group or is one of a group representing these movents or the Gas Consumers for whom the movents have acted, but he only represents himself and the City, as he is one of the four City Commissioners; that said Featherstone has never been a member of the Gas Consumers League of Lexington, Kentucky, which was organized for and on behalf of all the gas consumers of the said City; that the said Featherstone has never appeared before the Kentucky Railroad Commission or before the lower Court; nor filed any pleading or other paper or presented any testimony on behalf of himself nor has he employed any counsel to represent him in any of these proceedings and whatever representation as counsel he may have had herein, has been by counsel of the city, and this has been of a purely incidental character and as movents allege not fully representative of the rights and interests of the gas consumers of Lexington, Kentucky. Further the Gas Consumers League of Lexington have throughout the course of these proceedings believed that it was necessary

to have separate counsel and accordingly have had separate counsel in all these proceedings; and as a matter of fact caused to be written into the aforesaid franchise section 37 above quoted, so that there could be no secret dealings between the Company and the City, and to permit any one customer to intervene in his own behalf, but his own behalf only, and to permit any groups to intervene; the Kentucky Railroad Commission and the lower Court recognized Featherstone as an individual for himself, and then also recognized movents and those they represent as a group.

BRIEF.

Wherefore, the movents respectfully move this Honorable Court to dismiss this appeal for lack of proper parties thereto; and this motion is made without the intent or purpose of entering a general appearance for the movents herein but only their special appearance for the specific purposes of moving the dismissal of this appeal.

Movents state in behalf of this motion that not having been made parties to this appeal nor having ever been served with any citations they have been materially delayed in ascertaining the facts concerning the appeal, and in taking steps to protect themselves, including the filing of this motion; their first knowledge of the appeal was through newspaper publication after the appeal was docketed. They further state that they have used all diligence in the premises and they pray the equity of the Court.

This motion now filed in this form will be immediately printed and the printed copies filed on Monday, May 8, 1933.

The movents rely on Richardson vs. Greene, 130 U. S. 104 at 115, which dismissed the appeal No. 181 where the Court said:

> "But the issuing may be waived by the appellees; and a general appearance by them is a waiver of a citation. Alviso vs. United States, 72 U. S., 5 Wall. 824 (18: 492); Sage vs. Iowa Cent. R. Co., 96 U. S. 712,

715 (24: 641, 643). In No. 181 a general appearance for the appellees T. W. Ferry, Hodgden, Elwell, Nims and E. P. Ferry was entered in this Court on January 11, 1889. As to John Bower & Co. and John F. Betz *no general appearance for them* has been entered in No. 181, but only on January 14, 1889, an appearance specially for the making of the motion by them. *This is not a waiver of a citation.*"

Movents also rely on the case of Terry vs. Abraham, 93 U. S. 38, in which the Court held that where an appellant obtains an order of severance in the Court below, and does not make parties to his appeal some of the parties below who are interested in maintaining the decree, he cannot ask its reversal here on any matter which will injuriously affect their interests, and the Court said at page 39:

> "Conceding the appeal to be good as to these parties, and the issues between them (which is a little doubtful), it is very clear that no modification of the decree can be had here to the prejudice of those who were parties below and are not parties here."

See also Wilson vs. Keisel, 164 U. S. 248; 41 L. ed. 422.

Movents further respectfully represent that if the pending appeal should be determined on the record as it stands and without opportunity to prepare through counsel for argument and brief on the appeal, they will be irreparably injured in the event that such decision on the appeal as it stands may bind them in the premises.

But under Terry vs. Abraham, above, these movents cannot be bound by the judgment of this Court on this appeal unless they are parties to the appeal.

Chief Justice (then Mr. Justice) Hughes states the rules *In Re* Metropolitan Trust Company, 218 U. S. 312 at 320:

> "The decision of the circuit court of appeals, in reversing the final decree and in directing the remand to the state court, was of course, subject to the necessary limitations that it could apply only to the parties who had been brought before that court. It had no other purport. It is one of 'the ordinary rules re-

specting appeals' that 'all the parties to the record, who appear to have any interest in the order or the ruling challenged, must be given an opportunity to be heard on such appeal'. Davis vs. Mercantile Trust Co., 152 U. S. 590, at page 593, 38 L. ed. 563, 564, 14 Sup. Ct. Rep. 693, 695. See also Terry vs. Abraham (Terry vs. Merchants & P. Bank), 93 U. S. 38, 23 L. ed. 794; Wilson vs. Keisel, 164 U. S. 248, 251, 41 L. ed. 422, 423, 17 Sup. Ct. Rep. 124. If a party has not had this opportunity he is not bound; as to him an essential element of appellate jurisdiction is lacking. Accordingly when decree was entered in the Court below upon the mandate of the circuit court of appeals, the trust company was expressly excepted from its operation."

There is omitted from the transcript of the record on this appeal several hundred pages of material and vital testimony which was introduced in the Railroad Commission and in the lower Court, and there can be no proper consideration or determination of the issues involved on this appeal without such evidence.

These movents file herewith as part of this motion the affidavits of (1) Joseph W. Delph, president Gas Consumers League of Lexington, Kentucky, (2) J. Foley Price, former Commissioner of the City of Lexington, (3) Z. F. Elkin, former Commissioner of the City of Lexington, (4) W. C. Wilson, also a former Commissioner of the City of Lexington; also the affidavit of John W. Hardy.

Wherefore these movents respectfully pray that the above entitled appeal be dismissed.

Respectfully submitted,

MAURICE H. THATCHER,
JOSEPH A. EDGE,
JOHN H. CONNAUGHTON,
RAYMOND M. HUDSON,
Attorneys for these movents appearing specially for the purpose of this motion and for no other purpose.

DISTRICT OF COLUMBIA, to-wit:

I, John W. Hardy, being first duly sworn, depose and state:

I am a citizen and resident of the City of Lexington, Kentucky and by profession a minister of the Gospel and for many years, I was principal or member of the staff of the following colleges: McLean College, Hopkinsville, Kentucky; Culver-Stockton College, Canton, Missouri; and Transylvania College, Lexington, Kentucky. For the past sixteen years, I have been a resident and taxpayer of the city of Lexington, Kentucky, and a consumer of gas therein.

I am fully acquainted with all the proceedings in the various courts and before the State Railroad Commissioner of Kentucky, referred to in the instant appeal and in the motion to dismiss the appeal, this day being filed in the Supreme Court of the United States. I have attended all the hearings in the lower courts and before said Railroad Commission, dealing with the issues involved in these proceedings. At all such times, I have been Chairman of the Executive Committee of the Gas Consumer's League of Lexington, Kentucky, and in such capacity and as representing said League and its members and myself as a gas consumer and litigant, I have attended such hearings and have given assistance to counsel for representing said League and the gas consumers of Kentucky in all said proceedings. In addition, I have presided at various mass meetings in the City of Lexington, participated in by the gas consumers of said city, which meetings were called and held for the purpose of protecting the gas consumers of said city and to deal with the questions involved in the pending suit and the proceedings before the Kentucky Railroad Commission.

S. B. Featherstone named as one appellee in the appeal has not participated in any of these meetings, nor has he ever represented or undertaken to represent in any helpful

way the interests of the gas consumers of Lexington, Kentucky in any of the proceedings; nor has he any authority, and never has had any authority, to act for the Gas Consumers League of Lexington Kentucky, nor for any of the gas consumers of Lexington except for himself; he is not a member of any group nor group of gas consumers of said city.

I have read the foregoing motion to dismiss the appeal by Mrs. George Hignight and others, and the accompanying affidavits and documents and the best of my knowledge, information, and belief the statements contained in same are true and correct.

JOHN W. HARDY.

Subscribed and sworn to before me by John W. Hardy this 6th day of May, 1933.

MAUDE P. HUDSON,
Notary Public for D. C.

AFFIDAVIT OF OMITTED PARTIES.

The affiant, Jos. W. Delph states that he is a citizen and resident of the City of Lexington, Fayette County, Kentucky, and that he has lived in said County continuously for more than fifty (50) years; that he was the President of a voluntary association of gas consumers in the City of Lexington, known as the Gas Consumers League; that the membership of said League consists of more than sixty-two hundred (6,200) meter renters and gas consumers of the City of Lexington, purchasing their gas from the defendant, the Central Kentucky Natural Gas Company. In addition to its gas consumer membership the organization enjoyed the support in its various movement in favor of the gas consuming public of from thirty-five to forty-five additional persons, who were voters in said City.

The affiant has been actively connected with the litigation and legislation involving the fixation of rates for natural

gas in Lexington, Kentucky, and that he is actively participated in initiating and conducting to a successful termination a referendum proceeding directed at two gas franchises promulgated by the City of Lexington, the Central Kentucky Natural Gas Company, and a civic organization of the City of Lexington, known as the Chamber of Commerce; that the two franchises referred to in this affidavit and the other affidavits filed herewith contained provisions, highly inimical to the best interest of the citizens and the gas consumers of the City of Lexington, and if said franchise would have become effective, would have cost the citizens of the City of Lexington, a large sum of money in excess of reasonable and just rates for gas sold; that the officials of the City of Lexington and the said Central Kentucky Natural Gas Company are in accord with the provisions of the said franchise except in minor essentials.

At the time said franchises were introduced, the Corporation Counsel of the City of Lexington was W. H. Townsend who was General Counsel and closely identified with the Lexington Utilities Company which said Company owned the distribution system in Lexington through which the Central Kentucky Natural Gas Company delivered all gas sold by it, and which Utility Company also had an agreement with the Central Kentucky Natural Gas Company, that any franchise acquired by it to sell gas, would be sold and assigned to said utility company and by said Utility Company leased back to the Central Kentucky Natural Gas Company, to keep said gas company qualified to sell gas, but there was to be retained in the retransfer of said franchise 12½ per cent of the gross receipts received by the Gas Company for the sale of gas, said percentage to constitute a rental for the said distribution system of said utility company. It became known to the citizens of Lexington that collusive negotiations were being conducted between the City of Lexington and the Gas Company and that the close association between the City of Lexington and the utility company, through the

fact that the Corporation Counsel of the City of Lexington was also general counsel for the utility company, it became necessary for the gas consumers of the City of Lexington to organize to protect themselves against the combination of the City of Lexington and the said Gas Company, to prohibit the Gas Company to charge unreasonably high rates for its gas product; that in the said contest, the said S. B. Featherstone fraudulently appeared as the exponent of the two franchises, defeated by the said referendum proceeding. Said franchise provided for a minimum gas pressure of two ounces and a maximum of eight ounces, said provision being such that the gas service of said Company would thereafter have been, as it theretofore had been in periods of inclement weather, absolutely valueless; that the said Featherstone called a public meeting and openly advocated the adoption of said franchise, containing conditions highly advantageous to the Gas Company but meaning disaster and calamity to the gas consumers; that the said Featherstone was never a member of the gas consumers league and at no time represented the gas consumers as against the wicked and illegal combination between the City of Lexington and the said Gas Company; affiant states that it is true that the said Feathersone is named as a co-plaintiff with the City of Lexington in certain feeble gestures of a hostile nature directed by the said City toward the Gas Company, but there was no sincerity at any time, in any suit or proceeding instituted in the name of the City of Lexington against the Gas Company.

This affiant is informed, and believing his information to be correct thereupon avers and alleges the fact to be that the said Featherstone was joined in the said proceedings as a co-plaintiff at the instance and request of either the Attorneys or the officers of the said Central Kentucky Natural Gas Company. The said Featherstone also disclosed a stronger leaning toward and friendship for the said Gas Company than for the organized gas consumers, and that while the said Featherstone is named as a plain-

tiff in the proceeding before the Railroad Commission, the said Featherstone had never appeared in any proceeding before either the Fayette Circuit Court or the Railroad Commission of the State of Kentucky, and while the record in each tribunal consists of several hundred pages, there is no pleading, affidavit, statement, motion or deposition signed by the said Featherstone and he at no time had any counsel, save and except that representing the City of Lexington.

Affiant states that the said Featherstone at no time was so situated as to be considered or constituted or eligible to be a proper party to be designated as a class representative of the gas consumers of the City of Lexington; that the said Featherstone was selected by the Central Kentucky Natural Gas Company as in the offensive, an unresisting and willing defendant to the suit brought in the District Court of the United States to attack the award of the Railroad Commission of the State of Kentucky; that he made no defense in said District Court and appeared in said proceeding only once and then as a visitor with some city official; that he was named as a defendant in said proceeding in bad faith and in a sham movement to have the said Featherstone falsely presented to this Court as a representative of the gas consumers of the City of Lexington, hoping that this Court would accept the said Featherstone as the representative of the citizens of the City of Lexington in lieu and in place and stead of more than four thousand of said citizens who actively, through the Gas Consumers League of which this affiant was President, in defense of their rights as gas consumers, were engaged in this movement.

Affiant made this affidavit to disclose to this Honorable Court the fact that the gas consumers were represented in the lower tribunal by the Gas Consumers League and more than four thousand of them appearing through Counsel and selected by them and the said Featherstone, was at no time recognized by the City of Lexington as being identi-

fied with the gas consumers organization defending against a combination of the said City of Lexington and the said Gas Company to procure for, or permit the said Gas Company to adopt excessive or extortionate rates in Lexington, and prevent this Court from being misled and by being misled perchance render a decision or make same order agreeable to the parties who in good faith successfully litigated in the Fayette Circuit Court, in the Railroad Commission and in the Honorable District Court of the United States for the eastern District of Kentucky.

Further affiant sayeth not.

(Signed) J. W. DELPH.

Sworn to before me and subscribed in my presence this the 4th day of May, 1933.

(Signed) M. M. SCHEIDELL,
Notary Public, In and for
Fayette County, Kentucky.

AFFIDAVIT OF OMITTED PARTIES.

The affiant, J. Foley Price, states that he is a citizen and resident of Lexington, Kentucky, and that he has been such resident all of his life.

He states that he was appointed City Clerk of the City of Lexington, Fayette County, Kentucky, on or about the first day of February, 1925, and served continuously as such City Clerk from the date of his appointment until on or about the first Monday in January, 1928; that after being duly elected, he qualified and entered upon the discharge of his duties as one of the four (4) City Commissioners of the City of Lexington, being Commissioner of Finance, and that he occupied such position for the term ending the first Monday in January, 1920; that he was re-elected to said office by the voters of the City of Lexington, and entered upon the discharge of his duties for the second term, which expired on or about the first Monday of January, 1932.

He states that the franchise for the sale of natural gas in Lexington, expired in October, 1925, and that negotiations were opened between the Gas Company and the City of Lexington for a renewal of said franchise or for the sale of a new franchise for the sale of natural gas. The Gas Company threatened to discontinue gas service in October, 1925, and thereupon the City of Lexington filed its suit in the Fayette Circuit Court and included as Plaintiff therein, one S. B. Featherstone of the City of Lexington, as a Plaintiff purporting to sue for himself and all other citizens of the City of Lexington.

A controversy arose between the Board of Commissioners and the Gas Company relative to the franchise to be prepared and adopted. The gas consumers of the City of Lexington organized the Gas Consumers League and opposed both the City of Lexington and the Gas Company in all of the franchises, plans and legislation suggested either by the City or the Gas Company. This Gas Consumers League had for its Managers and Executive Committee, J. W. Hardy, Joseph Delph, Mrs. George Hignight, Stanley Dearborn, William Dearborn, Mrs. Gladys Berkley, P. P. O'Neill, Asa Kitchen and Mrs. Kate Bronaugh, and enlisted a membership of some ten thousand (10,000) voters.

This organization was represented through all subsequent negotiations, legislation and litigation by J. A. Edge of the Lexington Bar, who from time to time was aided in different branches of the case, by various other counsel.

A franchise ordinance was adopted, and the aforesaid Gas Consumers League inaugurated a referendum under the City Charter, signed by some thirteen thousand (13,000) voters out of a possible fifteen thousand (15,000) voters in the City of Lexington, and the franchise was repealed by the Commissioners.

The second franchise was adopted by the Board of Commissioners, which was again subjected to a referendum.

Before the referendum was completed, a compromise was affected between the City and the Gas Company on one side, and the Gas Consumers League on the other side, and pursuant to this compromise, there was placed in the franchise, Section 37, providing for the gas consumers generally to appear before the Board of Commissioners, in the Railroad Commission of the State of Kentucky, or in any Court, and become parties to any cause or contest, and be heard on terms of equality with the municipality or the Gas Company. They further required the discussion to be opened to the public and not to convene except after ten (10) days notice published in the official newspaper; that after the adoption of the franchise, a proceeding was instituted in the Railroad Commission of the State of Kentucky to fix the rates.

One S. B. Featherstone was named by the Attorneys for the City in their petition, but he was never allied with any of the activities of the gas litigation, so far as the City was concerned. He never appeared with any of the deputations of the Gas Consumers League and affiant knows of no activity on the part of the said S. B. Featherstone to indicate him as a proper party to represent the gas consumers of the City in this litigation. Affiant states that the interests of the gas consumers of the City of Lexington were represented exclusively, aggressively and continuously with the Gas Consumers League from the initiation of this action in 1925 down to the current date.

Further affiant sayeth not.

(Signed) J. FOLEY PRICE,

Sworn to before me and subscribed in my presence this the 3rd day of May, 1933.

(Signed) M. M. SCHEIDELL,
Notary Public, In and for
Fayette County, Kentucky.

AFFIDAVIT OF OMITTED PARTIES.

The affiant, Z. F. Elkin, states that he is a citizen of Lexington, Kentucky, and that he has been a resident thereof, all of his life. He states that he is now engaged in the merchandising business in the City of Lexington.

He further states that in 1926 he was elected a member of the Board of Commissioners of said City of Lexington and served on such Board until 1930.

He states he has read the affidavits of J. Foley Price and Wm. C. Wilson, with whom he served as such Commissioner, and endorses and concurs in the statements made by them relative to the gas controversy and the position of S. B. Featherstone therein.

He further states that while serving as such Commissioner, Mr. Featherstone was never called into any conference or had any connection at all with the gas controversy. He states that all expenditures were made by the Consumers League, and while he has no way of estimating the amounts expended in this manner and for this purpose by the said Gas Consumers League, he does know that the said League raised a considerable amount of money, and were recognized by the said Government as an integral part in all of the gas litigation.

(Signed) Z. F. Elkin.

Sworn to before me and subscribed in my presence this the 3rd day of May, 1933.

(Signed) M. M. Scheidell,
Notary Public, In and for
Fayette County, Kentucky.

AFFIDAVIT OF OMITTED PARTIES.

The affiant, Wm. C. Wilson, states that he is a citizen and resident of the City of Lexington, and has been such resident for the past twenty-five years excepting a period of

thirty (30) months when serving as an officer in the United States Army. He states that he is a graduate of the University of Kentucky, and that in 1923 the Board of Commissioners of the City of Lexington, appointed the affiant one of the City Commissioners to fill the unexpired term of a deceased member. He states that he served continuously on that Board from the time of his appointment until on or about the 4th day of January, 1932, at which time his term of office expired.

He states that the franchise for the sale of natural gas in Lexington expired in October of 1925, and that a Gas Consumers League was formed from among the gas consumers of the City of Lexington, of several thousand consumers and taxpayers who were opposed to the legislation proposed by the City and the Gas Company effecting the renewal of the franchise.

The League defeated one franchise by a referendum, and the second franchise had been subjected to a referendum when an agreement was reached by the City of Lexington and the Gas Company. The Gas Consumers League was represented by J. A. Edge as Counsel, and this agreement contained a provision that in all negotiations to be thereafter had relative to the fixation of gas rates, and all litigation affecting gas rates, that the consumers should be parties thereto. This provision was represented by Section 37 of the present Gas Franchise. An extensive litigation followed this both the Railroad Commission and the Federal Court. The above parties conducted this litigation on behalf of the gas consumers exclusively.

Affiant states he knows S. B. Featherstone personally; that he is a prominent citizen of the City of Lexington, but that he was never at any time identified with the Gas Consumers League of the City of Lexington. Said Featherstone was active in the affairs of the Chamber of Commerce which was apparently opposed to the gas consumers participating in the negotiations between the City and the Gas Company, and in this position Featherstone played a

rather prominent part. It was apparent from the proceeding in mass meeting that the gas consumers did not consider Featherstone at any time, either a member of the organization, or as being in sympathy with it.

Affiant states that he is familiar with civic affairs in the City of Lexington, and particularly with the litigation involved in this case, and is firmly of the opinion that said Featherstone is not a representative in any respect of the gas consumers of the City of Lexington.

(Signed) WM. C. WILSON.

Sworn to before me and subscribed in my presence this the 3rd day of May, 1933.

(Signed) M. M. SCHEIDELL,
Notary Public, In and For
Fayette County, Kentucky.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1932.

No. 779.

CENTRAL KENTUCKY NATURAL GAS COMPANY, *Appellant*,

vs.

RAILROAD COMMISSION OF KENTUCKY, MOSES R. GLENN, OSCAR VEST, AND JAMES HATCHER, MEMBERS CONSTITUTING SAID RAILROAD COMMISSION, ET AL, *Appellees*.

To Counsel for the Appellants and Appellees:

Take notice that we will this day file the original of the attached Motion to Dismiss with Brief, the pending appeal in the Supreme Court of the United States, on behalf of Hignight et als, Movents.

MAURICE H. THATCHER,
JOSEPH A. EDGE,
JOHN H. CONNAUGHTON,
RAYMOND M. HUDSON,
(409-10 Peoples Life Ins. Bldg.)
Attorneys for the Movents specially appearing for the purpose of this Motion and for no other purpose.

A copy was delivered to

1. Henry T. Duncan, attorney for Appellants.
2. C. M. Harbison, attorney for Appellees, in Washington, D. C., this 6th day of May, 1933, at their hotels.

JOHN H. CONNAUGHTON.